

These are the tentative rulings for civil law and motion matters set for Tuesday, July 30, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 29, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0030155 Financial Recovery Alliance vs. Lima, Andrea et al

Plaintiff and judgment creditor Financial Recovery Alliance, Inc.'s Motion for Assignment Order and Order Restraining Judgment Debtor is granted.

Pursuant to Code of Civil Procedure section 708.510, defendant and judgment debtors Andrea Lima and Vita Lima's rights to 25% of all fees, commissions and other payments owed from Heller and Heller Real Estate, Inc. are hereby assigned to Financial Recovery Alliance, Inc., until such time as judgment in this action is satisfied.

Pursuant to Code of Civil Procedure section 708.520, judgment debtors Andrea Lima and Vita Lima shall be restrained from assigning, encumbering or otherwise disposing of the right to payments assigned pursuant to this court's order.

2. M-CV-0057545 No. California Coll. Service vs. Hoseit, Max, et al

Plaintiff's Motion to Compel Production of Documents is granted. Although defendant's counsel asserts that all documents have been produced, his declaration is insufficient as it is not stated under penalty of perjury, and does not contain a statement of correctness. Code Civ. Proc. § 2015.5(a). Defendant Jon Borden must serve all responsive documents to the subject request for production of documents by no later than August 13, 2013.

Plaintiff's Motion to Compel Further Responses to Set One Special Interrogatories is denied in part, and granted in part. The motion is denied with respect to Special Interrogatory Nos. 6, 7, 11, 12 and 13. The responses to these interrogatories state facts that purportedly support the stated affirmative defenses. That the responses do not offer any facts that actually support the defenses may give rise to different remedies, but the court cannot compel defendant to provide additional facts when he asserts that he has nothing more to state. The motion is also denied with respect to Special Interrogatory No. 17. Defendant states in response to this

interrogatory that he does not know of the existence of any documents. This response is straightforward, and does not require additional information as he does not contend that he does not have sufficient knowledge to respond. The motion is granted with respect to Special Interrogatory No. 16. Defendant's response is ambiguous. If defendant lacks personal knowledge sufficient to respond fully to the interrogatory, he must state that a reasonable and good faith effort has been made to obtain the information by inquiry to others. Code Civ. Proc. § 2030.220(c). Defendant Jon Borden must serve a supplemental response to Special Interrogatory No. 16 by no later than August 13, 2013.

3. M-CV-0057619 American Express Bank, FSB vs. Holt, Loy Douglas

Appearance required. Plaintiff is advised that the notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Plaintiff American Express Bank, FSB's Motion to Deem Matters Admitted is granted. The requests for admission propounded on defendant on April 15, 2013 shall be deemed admitted. Plaintiff's request for sanctions is denied, as the notice of motion fails to cite the appropriate legal authority for the request for sanctions. Code Civ. Proc. § 2023.040; Local Rule 20.2.4(E).

4. M-CV-0058663 Pitamber, Ramesh vs. Juarez, Timothy et al

Appearance is required for hearing on defendants' ex parte application for stay of execution of judgment. Proof of service of the July 26, 2013, order is required no later than the time of the hearing.

5. M-CV-0058664 Pitamber, Ramesh vs. Juarez, Timothy et al

Appearance is required for hearing on defendants' ex parte application for stay of execution of judgment. Proof of service of the July 26, 2013, order is required no later than the time of the hearing.

6. M-CV-0058837 Taylor, Jon, et al vs. Nu Digital Marketing, Inc.

As a preliminary matter, the court notes that defendant filed a notice of non-stipulation to the commissioner on July 24, 2013. Defendant's notice is untimely as it was not filed at least five court days prior to the first law and motion hearing date. Local Rule 20.2(B).

Plaintiffs' request for judicial notice is denied. Defendant's Demurrer to Plaintiff's Complaint is overruled. Plaintiff's complaint adequately alleges a cause of action for unlawful detainer. It is accurate that the agreement attached to the complaint as Exhibit 1 is titled "Contract of Sale Residential Property". However, through Sections 2(E) and 3, defendant is obligated to make monthly "probationary installment" payments which do not appear to be credited to the down payment, and defendant's default in making such payments gives plaintiffs the right to obtain possession of the property, for which they retain legal title, following service of a five-day notice to quit. Such provisions appear to create a lessor/lessee relationship between

the parties to the agreement. The complaint otherwise adequately alleges requisite elements to state an unlawful detainer claim.

Defendant shall file and serve its answer to the complaint by no later than August 6, 2013.

7. M-CV-0058871 Springview Village Apartments vs. Jones, Jennifer

Appearance required on July 30, 2013 at 8:30 a.m. in Department 40 for hearing on defendant Jennifer Jones' Application for Stay of Execution.

8. S-CV-0024808 Gonero, Alex vs. Union Pacific Railroad Co., et al

Appearance required on July 30, 2013 at 8:30 a.m. in Department 43, before the Honorable Michael W. Jones. Defendant's request for a telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

9. S-CV-0029255 Devargas, Andre, et al vs. K & R Pools and Spas, et al

Plaintiffs' Motion for Protective Order re: Demand For Inspection of Land is denied. Plaintiffs fail to establish good cause for issuance of a protective order. An inspection of the property is warranted under the facts of this case, to determine whether damages caused by the alleged construction defects have worsened since the last noticed site inspection in July 2012. Defendant is not required to rely on plaintiffs' counsel's representation regarding whether or not conditions have changed. Plaintiffs' request for sanctions in connection with this motion is denied.

Defendant K&R Pools and Spas' Motion to Compel Site Inspection is granted. As noted above, there is good cause to permit inspection of the subject property. Plaintiffs' objections on the grounds of undue burden and expense are not persuasive. Defendant is awarded sanctions from plaintiffs and their counsel, jointly and severally, in the amount of \$525.

10. S-CV-0029985 Slade, Wendy vs. Leyte, Norman R.

Plaintiff's Motion for Leave to File Amended Complaint is denied without prejudice. There is no proof of service in the court's file indicating proper service of the motion on defendant. Defendant also confirms that the motion was improperly served with insufficient notice time.

11. S-CV-0030677 Macy's West Stores, Inc., et al vs. Roseville Shoppingtown

The Demurrer to the First Amended Cross-Complaint is continued on the court's own motion to August 6, 2013 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry. The court apologizes for any inconvenience to the parties.

12. S-CV-0031317 Tina Marie Gomez Executor of The Estate vs. Langle, Gerald

The Motion for Judgment on the Pleadings and Motion for Order Dissolving Preliminary Injunction or Alternatively Modifying Preliminary Injunction are continued on the court's own motion to August 6, 2013 at 8:30 a.m. in Department 40. The court apologizes for any inconvenience to the parties.

13. S-CV-0031781 Wilson, Edwin vs. Food Service Insurance Managers, Inc

The Motion for Summary Judgment and Motion for Leave to File First Amended Complaint are continued on the court's own motion to August 6, 2013 at 8:30 a.m. in Department 40. The court finds good cause to have the motion for summary judgment heard less than 30 days prior to the current trial date pursuant to Code of Civil Procedure section 437c(a). The court apologizes for any inconvenience to the parties.

14. S-CV-0032037 Casimir, Christopher, et al vs. Crowley, Christopher, et al

The Motions to be Relieved as Counsel are dropped. Substitutions of attorney have been filed.

15. S-CV-0032255 Russell, Stephanie vs. Federal National Mortgage Ass'n, et al

The Demurrer to the First Amended Complaint is continued to August 6, 2013 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

16. S-CV-0032510 Gomez, Marcel J. vs. Director - Dept. of Motor Vehicles

Petitioner Marcel Joseph Gomez's Petition for Writ of Mandate is denied without prejudice. There is no proof of service in the court's file indicating that the petition was ever served on respondent. Nor is there a notice of hearing, or any proof of service indicating that respondent was notified of the hearing date on the writ petition. Finally, petitioner submits no points and authorities setting forth any purported abuse of discretion by respondent in the underlying matter.

17. S-CV-0032601 Rudd, Frederick L. vs. Spears, Cynthia, et al

The Motion to Disqualify Counsel is continued to August 20, 2013 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

18. S-CV-0032665 Winter, Jean, et al vs. Macy's, Inc.

The Motion for Trial Preference was dropped.

19. S-CV-0032712 Bautista, Rochelle, et al vs. Sakic, Amir, et al

Defendant Amir Sakic's Motion to Consolidate Placer County Superior Court Actions MCV-0055027 and SCV-0032712 is granted. Case No. SCV-0032712, Bautista et al. v. Sakic et al. shall be the lead case.

20. S-CV-0032771 Wagenhals, Constance N. vs. Gibbons, Phillip E.

Defendants' Demurrer to First Amended Complaint for Professional Negligence is sustained with leave to amend.

The first amended complaint ("FAC") alleges a single cause of action against defendants for professional negligence, based on defendants' representation of plaintiff and her mother, Constance Elkus ("Elkus") as co-trustees of the Constance N. Elkus 2002 Revocable Trust ("the Trust"). (FAC, ¶ 11.) Plaintiff is named in the complaint only in her individual capacity, and does not sue on behalf of the Trust, or for damages to the Trust. The FAC alleges that defendants breached their fiduciary duties to plaintiff, as an individual, and seeks damages that were owed to plaintiff as the beneficiary of the Trust.

The acts which plaintiff alleges constitute breaches of defendants' duties are the failure to draft an amendment effectively disinheriting plaintiff's sister, and the failure to draft an amendment transferring certain real property into the Trust. (FAC, ¶ 33.) Plaintiff, as co-trustee of the Trust, did not hold powers to amend or modify the Trust. (FAC, Exh. A, Art. 7.) No subsequent amendment to the Trust amended Article Seven. (FAC, Exhs. B, C.) As plaintiff did not hold any power to amend or modify the Trust, defendants' failure to draft documents modifying the terms of the Trust do not constitute a breach of any duty defendants owed to plaintiff.

Further, defendants owed no duty to plaintiff as a potential beneficiary of a greater share of the Trust assets. *Chang v. Lederman* (2009) 172 Cal.App.4th 67, 81-83. Where plaintiff puts the intent of the settlor at issue by claiming that the trust does not properly express the settlor's intent, though it is properly executed and free of other legal defects, the attorney will not be held accountable to the potential beneficiary. *Id.* at 82. An attorney owes no duty to an expressly named beneficiary who attempts to assert a legal malpractice claim on the grounds that the settlor intended to revise the Trust to increase the beneficiary's share, and would have done so but for the attorney's negligence. *Id.* at 86.

Any amended complaint must be filed and served by August 20, 2013. If oral argument is requested, plaintiff's request for a telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

21. S-CV-0032945 Morales, Kelly, et al vs. Trinity Health and Wellness Center

The Demurrer to the Complaint is dropped. A first amended complaint has been filed.

22. S-CV-0033053 Gudka, Shil, et al - In Re the Petition of

Appearance required on July 30, 2013 at 8:30 a.m. in Department 40. The Petition to Approve Compromise of Pending Action for Minor Shil Gudka appears to omit Attachment 19(b)(2), stating the name, branch and address of the depository where the settlement funds will be deposited. Counsel may file a supplement to the petition at the time of hearing, which includes Attachment 19(b)(2). Appearance of the minor is excused.

23. S-PR-0006047 Morales, Mario Christian III - In Re the Guardianship of

The Motion to be Relieved as Counsel by Holly S. Burgess is denied without prejudice. First, the motion is incomplete as the declaration fails to state the manner in which Ms. Burgess confirmed within the past 30 days that the address of her client is current. (Declaration in Support of Attorney's Motion to be Relieved as Counsel, Section (3)(b)(1)(A)-(D).) Cal. R. Ct., rule 3.1362(d)(2). Second, the motion was served with insufficient notice time. As Ms. Burgess' client resides outside of the state of California, the time for notice is extended by 10 calendar days. Code Civ. Proc. § 1013(a).

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